

ORIGINAL

FILED IN THE
UNITED STATES DISTRICT COURT
DISTRICT OF HAWAII

United States District Court

for the

DISTRICT OF HAWAII

APR 17 2006

at 10 o'clock and 40 min. AM
SUE BEITIA, CLERK**Request for Modifying the Conditions or Term of Supervision
with Consent of the Offender***(Probation Form 49, Waiver of Hearing is Attached)*

Name of Offender: JAMES C. KUPUKAA

Case Number: CR 02-00382ACK-01

Name of Sentencing Judicial Officer: The Honorable Alan C. Kay
Senior U.S. District Judge

Date of Original Sentence: 7/15/2004

Original Offense: Count 1: Possession of an Unregistered Firearm, in violation of
26 U.S.C. §§ 5845(a) and 5861(d), a Class C felony

Original Sentence: Twenty-eight (28) months imprisonment followed by three (3) years supervised release with the following special conditions: 1) That the defendant participate in a substance abuse program, which may include drug testing at the discretion and direction of the Probation Office; 2) That the defendant is prohibited from possessing any illegal or dangerous weapons; 3) That the defendant provide the Probation Office access to any requested financial information; 4) That the defendant participate in a mental health program at the discretion and direction of the Probation Office; and 5) That the defendant shall submit his person, residence, place of employment, and vehicle to a search conducted by the U.S. Probation Office at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of supervision. Failure to submit to a search may be grounds for revocation. The defendant shall warn any other resident that the premises may be subject to search pursuant to this condition.

Type of Supervision: Supervised Release Date Supervision Commenced: 12/5/2005**PETITIONING THE COURT**☒ To modify the conditions of supervision as follows:**General Condition:**

That the defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of the commencement of supervision and at least two drug

tests thereafter but no more than eight valid drug tests per month during the term of supervision (mandatory condition).

Special Condition No. 1: That the defendant shall participate and comply with substance abuse treatment which includes drug and alcohol testing, at the discretion and direction of the Probation Office. The defendant is to refrain from the possession and/or use of alcohol while participating in substance abuse treatment.

CAUSE

The offender violated his supervised release as follows:

Violation No. 1 - Urine Specimen Submitted on 3/27/2006 Tested Positive for Methamphetamine and Amphetamine

On 3/28/2006, Freedom Recovery Services, Inc. (FRSI), informed this officer that the offender's 3/27/2006 urine specimen tested positive for methamphetamine and amphetamine. The urine specimen was subsequently sent to Scientific Testing Laboratories, Inc. (STLI), for confirmation testing. On that same date, this officer telephonically questioned the offender concerning the 3/27/2006 positive urine specimen. The offender denied that he had used methamphetamine but admitted that he was with friends who had used "ice," or crystal methamphetamine.

On 4/6/2006, this officer met with the offender. This officer advised the offender that if his 3/27/2006 urine specimen was confirmed positive for methamphetamine by STLI, this officer would recommend that the Court revoke his supervision given his denial of methamphetamine use. Additionally, this officer advised the offender that if he admitted that he had used methamphetamine which led to the 3/27/2006 positive test, this officer would consider his admission as his desire to continue drug treatment and drug testing. Subsequently, the offender admitted that on or around 3/26/2006, he smoked "ice" with several friends. The offender further admitted that he also consumed alcohol. This officer informed the offender that he was in violation of his supervision for using methamphetamine and alcohol. This officer further advised the offender that the Court would be notified of his admission of illicit drug use and alcohol use while in substance abuse treatment.

As a sanction and rehabilitative measure, the offender agreed that he would participate in drug testing throughout the entire term of his supervision. In this regard, the offender agreed that he would submit to drug testing in his current drug testing regimen for an additional 3 months before moving to a less restrictive testing regimen. The offender also agreed that after completing the substance abuse program at FRSI, he would participate in random drug testing by the Probation Officer.

On 4/7/2006, STLI confirmed that the offender's 3/27/2006 urine specimen tested positive for methamphetamine and amphetamine.

In support of the recommended modification, this officer notes that the offender did not disclose his substance abuse history during his presentence investigation. Additionally, at his supervision processing on 12/5/2005, the offender denied that he had a history of drug and alcohol abuse. Given his admission of drug and alcohol use, the offender poses an increased risk to reoffend.

Attached is a signed Waiver of Hearing to Modify Conditions of Supervised Release and/or Extend Term of Supervision. The offender waives his right to a hearing and to assistance of counsel. The U.S. Attorney's Office and the subject's counsel, First Assistant Federal Public Defender Alexander M. Silvert, have been notified of the proposed modifications and have no objections.

Respectfully submitted by,



DEREK M. KIM
Senior U.S. Probation Officer

Approved by:



GENE DeMELLO, JR.
Supervising U.S. Probation Officer

Date: 4/12/2006

THE COURT ORDERS:

- ☐ No Action
- ☐ The Extension of Supervision as Noted Above
- ☒ The Modification of Conditions as Noted Above
- ☐ Other



ALAN C. KAY
Senior U.S. District Judge

4/12/06

Date

United States District Court

District of Hawaii

Waiver of Hearing to Modify Conditions of Probation/Supervised Release and/or Extend Term of Supervision

I have been advised and understand that I am entitled by law to a hearing and assistance of counsel before any unfavorable change may be made in my Conditions of Probation and Supervised Release and/or my period of supervision being extended. By "assistance of counsel," I understand that I have the right to be represented at the hearing by counsel of my own choosing if I am able to retain counsel. I also understand that I have the right to request the court to appoint counsel to represent me at such a hearing at no cost to myself if I am not able to retain counsel of my own choosing.

I hereby voluntarily waive my statutory right to a hearing and to assistance of counsel. I also agree to the following modification of my Conditions of Probation and Supervised Release and/or to the proposed extension of my term of supervision:

- ☐ To extend the term of supervision for years, for a total term of years.
☒ To modify the conditions of supervision as follows:

General Condition:

That the defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of the commencement of supervision and at least two drug tests thereafter but no more than eight valid drug tests per month during the term of supervision (mandatory condition).

Special Condition No. 1:

That the defendant shall participate and comply with substance abuse treatment which includes drug and alcohol testing, at the discretion and direction of the Probation Office. The defendant is to refrain from the possession and/or use of alcohol while participating in substance abuse treatment.

Witness:



DEREK M. KIM
Senior U.S. Probation Officer

Signed



JAMES C. KUPUKAA
Supervised Releasee

4/10/06

Date